

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*

Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*

A. Factual Basis

1. Regulation 4604

Business and Professions Code (BPC) section 22978.4 provides as follows:

22978.4.

(a) Except as otherwise provided in paragraph (7), each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(6) The date the cigarette or tobacco products are sold.

(7) Notwithstanding paragraph (3), a distributor that is also a retailer or manufacturer shall include either one of the following on each invoice for the sale of cigarettes or tobacco products:

(A) A statement that reads: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

(B) The amount of excise taxes due to the board by the distributor on the distribution of cigarettes and tobacco products.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

Subdivision (a) of California Code of Regulations, title 18, section (Regulation) 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, lists provisions of the Cigarette and Tobacco Products Licensing Act (BPC § 22970 et seq.) and provides that a first offense for the violation of any of the listed provisions will result in the issuance of a Warning Notice. Currently, Regulation 4604, subdivision (a)(2), refers to subdivision (c) of BPC section 22978.4, which is a penalty provision. However, it should have referred to subdivisions (a) and (b) of BPC section 22978.4, instead, because subdivisions (a) and (b) are provisions imposing invoicing requirements and it is a first offense for a violation of either of the invoicing requirements that will result in the issuance of a Warning Notice. As a result, the State Board of Equalization (Board) proposes to replace the reference to BPC section 22978.4, subdivision “(c)” with a reference to BPC section 22978.4, subdivision “(a) or (b),” in subdivision (a)(2) of the regulation, and add a reference to BPC section 22978.4, subdivisions (a) and (b) to the regulation’s reference note.

BPC section 22978.5 provides as follows:

22978.5.

- (a) Each distributor and each wholesaler of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a the board or a law enforcement agency.
- (b) Failure of a distributor or a wholesaler to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

Currently, Regulation 4604, subdivision (a)(3), refer to BPC section 22978.5, subdivision (b), which is also a penalty provision. However, it should have referred to BPC section 22978.5, subdivision (a), instead, because subdivision (a) is a provision imposing record-keeping requirements and it is a first offense for a violation of the record-keeping requirements that will result in the issuance of a Warning Notice. As a result, the Board proposes to replace the references to BPC section 22978.5, subdivision “(b)” with references to BPC section 22978.5, subdivision “(a)” in subdivision (a)(3) of the regulation and the regulation’s reference note.

Currently, Regulation 4604, subdivision (c), refers to Regulation 4607, *Determination of Fine*, as “Regulation 4607.” However, Regulation 4604, subdivision (d)(4), refers to Regulation 4607 as “section 4607.” As a result, the Board proposes to replace the reference to “section” 4607 with a reference to “Regulation” 4607 in subdivision (d)(4) of the regulation, in order to make subdivision (d)(4) consistent with subdivision (c).

2. Regulation 4605

BPC section 22979.5 provides as follows:

22979.5.

(a) Each manufacturer and each importer of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a representative of the board or a law enforcement agency.

(b) Failure of a manufacturer or an importer to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

Subdivision (a) of Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*, also lists provisions of the Cigarette and Tobacco Products Licensing Act and provides that a first offense for the violation of any of the listed provisions will result in the issuance of a Warning Notice. Currently, Regulation 4605, subdivision (a)(3), refers to BPC section 22979.5, subdivision (b), which is a penalty provision. However, it should have referred to BPC section 22979.5, subdivision (a), instead, because subdivision (a) is a provision imposing record-keeping requirements and it is a first offense for a violation of the record-keeping requirements that will result in the issuance of a Warning Notice. As a result, the Board proposes to replace the references to BPC section 22979.5, subdivision “(b)” with references to BPC section 22979.5, subdivision “(a)” in subdivision (a)(3) of the regulation and the regulation’s reference note.

BPC section 22979.6 provides as follows:

22979.6.

(a) Each manufacturer and each importer shall include the following information on each invoice for the sale for distribution, wholesale, or retail sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the manufacturer, or importer.

(2) The license number of the manufacturer or importer as provided by the board.

(3) The name, address, and license number of the person to whom cigarettes or tobacco products are sold.

(4) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

Currently, Regulation 4605, subdivision (a)(6) refers to BPC section 22979.6, subdivision (c), which is a penalty provision. However, it should have referred to BPC section 22979.6, subdivisions (a) and (b), instead, because subdivisions (a) and (b) are provisions imposing invoicing requirements and it is a first offense for a violation of either of the invoicing requirements that will result in the issuance of a Warning Notice. As a result, the Board proposes to replace the reference to BPC section 22979.6, subdivision “(c)” with a reference to BPC section 22979.6, subdivision “(a) or (b),” in subdivision (a)(6) of the regulation, and replace the reference to BPC section 22979.6, subdivision “(c)” with a reference to BPC section 22979.6, subdivisions “(a) and (b)” in the regulation’s reference note.

The Board has determined that the proposed changes to Regulations 4604 and 4605 are appropriate for processing under California Code of Regulations, title 18, section (Rule) 100. This is because the changes revise statutory cross-references in Regulations 4604 and 4605 to correct minor, inadvertent cross-referencing errors, update the regulations’ reference notes to make them consistent with the revised cross-references, revise the format of the cross-reference to a Regulation 4607 in Regulation 4604, and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Changes

The following Rule 100 changes are proposed to Regulations 4604 and 4605:

TEXT OF PROPOSED CHANGES

4604. Penalties for Licensed or Unlicensed Wholesalers and Distributors.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) . . . (unchanged).

(2) Business and Professions Code section 22978.4, subdivision ~~(c)~~(a) or (b) (distributor’s or wholesaler’s failure to comply with invoice requirements).

(3) Business and Professions Code section 22978.5, subdivision ~~(b)~~(a) (distributor’s or wholesaler’s failure to retain sales records).

(4) . . . (unchanged).

(5) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(c) . . . (unchanged).

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with ~~section~~Regulation 4607.

(e) . . . (unchanged).

(f) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22977(a)(5), 22978.1, 22978.2, 22978.4(a) and (b), 22978.5~~(b)~~(a), 22978.7, 22979.7, 22980(b), 22980.1(b), (c), (d), (e), (f) and (g), 22980.2(a) and 22980.3(a)(2) and (d), Business and Professions Code.

4605. Penalties for Licensed or Unlicensed Manufacturers and Importers.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) Business and Professions Code section 22979.5, subdivision ~~(b)~~(a) (manufacturer's or importer's failure to retain sales records on premises).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) Business and Professions Code section 22979.6, subdivision ~~(e)~~(a) or (b) (manufacturer's or importer's failure to comply with invoice requirements).

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22979(b)(1), 22979.4, 22979.5~~(b)~~(a), 22979.6~~(e)~~(a) and (b), 22979.7, 22980.1(a), (e) and (f), and 22980.2(a), and 22980.3(a)(2) and (d), Business and Professions Code.